

EXHIBIT 2

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In Re: Chapter 11
Case No.
01-01139 JKF
W.R. Grace & Co., et al.,
Debtors. (Jointly Administered)

X

— — —
May 6, 2009
— — —

DEPOSITION of JEFFREY POSNER, held
at the offices of Kirkland & Ellis, 655
Fifteenth Street, N.W., Washington, DC,
commencing at 9:08 A.M., on the above
date, before Lisa Lynch, a Registered
Merit Reporter, New Jersey Certified Court
Reporter, License No. XI00825, and
Certified Realtime Reporter

— — —
MAGNA LEGAL SERVICES, LLP
7 Penn Center, 8th Floor
1635 Market Street
Philadelphia, PA 19103
1.866.MAGNA.21

Page 2

Page 4

1 APPEARANCES:
2
3 DRINKER BIDDLE & REATH, LLP
BY: MICHAEL F. BROWN, ESQUIRE
One Logan Square
4 18th and Cherry Streets
Philadelphia, Pennsylvania 19103-6996
5 (brownmf@dbb.com)
Representing OneBeacon America Insurance
6 Company, Seaton Insurance Company,
Government Employees Insurance Company,
7 Columbia Insurance Company f/k/a Republic
Insurance Company
8
9 ANDERSON KILL & OLICK, PC
BY: ROBERT M. HORKOVICH, ESQUIRE
10 1251 Avenue of the Americas
New York, New York 10020
11 212.278.1322
(rhorkovich@andersonkill.com)
12 Representing Grace, Official Committee of
Asbestos Personal Injury Claimants ("ACC")
13
14 W.R. GRACE & CO.
BY: RICHARD C. FINKE, ESQUIRE*
15 ASSISTANT GENERAL COUNSEL
(*VIA TELECONFERENCE)
16 5400 Broken Sound Boulevard, NW
Suite 300
17 Boca Raton, Florida 33487
561.362.1533
18 Representing W.R. Grace & Co.
19
20 KIRKLAND & ELLIS, LP
BY: LISA G. ESAYIAN, ESQUIRE
300 North LaSalle Street
21 Chicago, Illinois 60654
312.862.2226
22 (lisa.esayian@kirkland.com)
Representing the Debtors
23
24

1 Representing Anderson Memorial Hospital
2 APPEARANCES: (continued)
3
4 MENDES & MOUNT, LLP
BY: CAROLINA ACEVEDO, ESQUIRE
750 Seventh Avenue
5 New York, New York 10019
212.261.8262
6 (carolina.acevedo@mendes.com)
Representing AXA Belgium as Successor to
7 Royale Belge SSA
8
9 MENDES & MOUNT, LLP
BY: ALEXANDER MUELLER, ESQUIRE
750 Seventh Avenue
10 New York, New York 10019
212.261.8296
11 (alexander.mueller@mendes.com)
Representing London Market Companies
12
13 FORD MARRIN ESPOSITO & WITNEYER & GLESER
BY: ELIZABETH M. DeCRISTOFARO, ESQUIRE
14 Wall Street Plaza
New York, New York 10005-1875
212.269.4900
15 Representing Continental Casualty Company
and Continental Insurance Company
16
17 BILZIN SUMBERG BAENA PRICE & AXELROD, LLP
BY: MATTHEW I. KRAMER, ESQUIRE*
18 (*VIA TELECONFERENCE)
200 South Biscayne Boulevard
19 Suite 2500
20 Miami, Florida 33131-5340
305.450.7246
21 (mkramer@bilzin.com)
Representing Property Damage Committee
22
23
24

Page 3

Page 5

1 APPEARANCES: (continued)
2 SIMPSON THACHER & BARTLETT, LLP
BY: MARY BETH FORSHAW, ESQUIRE
3 425 Lexington Avenue
New York, New York 10017-3954
4 212.455.2846
(mbforshaw@stblaw.com)
5 Representing Travelers Casualty and Surety
Company
6
7 VORYS, SATER, SEYMOUR AND PEASE, LLP
BY: WILLIAM J. POHLMAN, ESQUIRE
8 52 East Gay Street
Columbus, Ohio 43215
9 614.464.8349
(wjphlman@vorys.com)
10 Representing The Scotts Company, LLC
11
12 COHN WHITESELL & GOLDBERG, LLP
BY: DANIEL C. COHN, ESQUIRE
101 Arch Street
13 Boston, Massachusetts 02110
617.951.2505
14 (cohn@cwglf.com)
Representing the Libby Claimants
15
16 LEWIS, SLOVAK & KOVACICH, PC
BY: MARK M. KOVACICH, ESQUIRE
P.O. Box 2325
17 723 Third Avenue
Great Falls, Montana 59403
18 406.761.5595
mark@lslaw.net
19 Representing the Libby Claimants
20
21 SPEIGHTS & RUNYAN
BY: DANIEL H. SPEIGHTS, ESQUIRE*
22 (*VIA TELECONFERENCE)
200 Jackson Avenue East
23 P.O. Box 685
Hampton, South Carolina 29924
803.943.4444
24

1 APPEARANCES: (continued)
2
3 STROOCK & STROOCK & LAVAN, LLP
BY: ARLENE G. KRIEGER, ESQUIRE*
4 (*VIA TELECONFERENCE)
180 Maiden Lane
New York, New York 10038-4982
5 212.806.5400
(akrieger@stroock.com)
6 Representing Official Committee of
Unsecured Creditors
7
8 CROWELL & MORING, LLP
BY: PATRICIA CONNALLY, ESQUIRE
9 1001 Pennsylvania Avenue, N.W.
Washington, DC 20004-2595
10 202.624.2913
(pconnally@crowell.com)
11 Representing Fireman's Fund Insurance
(Surety Bond)
12
13 STEVENS & LEE, P.C.
BY: JOHN D. DEMMY, ESQUIRE*
14 (*VIA TELECONFERENCE)
1105 North Market Street, 7th Floor
15 Wilmington, Delaware 19801
302.654.5180
16 (jdd@stevenslee.com)
Representing Fireman's Fund Insurance
17
18 LAW OFFICES OF ALAN B. RICH
BY: ALAN B. RICH, ESQUIRE
19 Elm Place, Suite 4620
1401 Elm Street
20 Dallas, Texas 75202
214.744.5100
21 (arich@alanrichlaw.com)
Representing Property Damage PCR
22
23
24

Page 6

Page 8

1 APPEARANCES: (continued)
 2
 3 CONNOLLY BOVE LODGE & HUTZ, LLP
 4 BY: JEFFREY C. WISLER, ESQUIRE
 5 The Nemours Building
 6 1007 North Orange Street
 7 P.O. Box 2207
 8 Wilmington, Delaware 19899
 9 302.888.6528
 10 (jwisler@cblh.com)
 11 Representing Maryland Casualty
 12
 13 ECKERT SEAMANS CHERIN & MELLOTT, LLC
 14 BY: EDWARD J. LONGOSZ, II, ESQUIRE
 15 1747 Pennsylvania Avenue, N.W.
 16 12th Floor
 17 Washington, DC 20006
 18 202.659.6619
 19 (elongsz@eckertseamans.com)
 20 Representing Maryland Casualty and Zurich
 21
 22 WILEY REIN, LLP
 23 BY: KARALEE C. MORELL, ESQUIRE
 24 1776 K Street NW
 Washington, DC 20006
 202.719.7520
 (kmorell@wileyrein.com)
 Representing Maryland Casualty and Zurich
 COZEN O'CONNOR
 BY: ILAN ROSENBERG, ESQUIRE*
 (*VIA TELECONFERENCE)
 1900 Market Street
 Philadelphia, Pennsylvania 19103-3508
 215.665.4621
 (irosenberg@cozen.com)
 Representing Federal Insurance Company

1 APPEARANCES: (continued)
 2
 3 WOMBLE CARLYLE SANDRIDGE & RICE, PLLC
 4 BY: KEVIN J. MANGAN, ESQUIRE*
 5 (*VIA TELECONFERENCE)
 6 222 Delaware Avenue
 7 Suite 1501
 8 Wilmington, Delaware 19801
 9 302.252.4361
 10 (kmangan@wcsr.com)
 11 Representing State of Montana
 12
 13 PEPPER HAMILTON, LLP
 14 BY: LINDA J. CASEY, ESQUIRE*
 15 (*VIA TELECONFERENCE)
 16 3000 Two Logan Square
 17 Philadelphia, Pennsylvania 19103
 18 215.981.4000
 19 (caseyl@pepperlaw.com)
 20 Representing BNSF Railway Company
 21
 22 ALSO PRESENT:
 23
 24 ALLEN SCHWARTZ, O'Melveny & Meyers LLP

Page 7

Page 9

1 APPEARANCES: (continued)
 2
 3 ORRICK HERRINGTON & SUTCLIFFE, LLP
 4 BY: JONATHAN P. GUY, ESQUIRE
 5 PERI N. MAHALEY, ESQUIRE
 6 Columbia Center
 7 1152 15th Street, N.W.
 8 Washington, DC 20005-1706
 9 202.339.8516
 10 (jguy@orrick.com)
 11 (pmahaley@orrick.com)
 12 Representing PI Future Claimants'
 13 Representative
 14
 15 CUYLER BURK, P.C.
 16 BY: ANDREW CRAIG, ESQUIRE*
 17 (*VIA TELECONFERENCE)
 18 4 Century Drive
 19 Parsippany, New Jersey 07054
 20 973.734.3200
 21 (acraig@cuyler.com)
 22 Representing Allstate Insurance Company
 23
 24 WILSON ELSER MOSKOWITZ
 EDELMAN & DICKER, LLP
 BY: CARL J. PERNICONE, ESQUIRE
 150 East 42nd Street
 New York, New York 10017-5639
 212.915.5656
 (carl.pernicone@wilsonelser.com)
 Representing Arrowood Indemnity Company
 O'MELVENY & MEYERS LLP
 BY: TANCRED SCHIAVONI, ESQUIRE
 7 Times Square
 New York, New York 10036
 212.326.2267
 (tschiavoni@omm.com)
 Representing Arrowood Indemnity Company

1 INDEX
 2 EXAMINATION
 3
 4 Witness Name Page
 5 JEFFREY POSNER
 6 BY MS. FORSHAW 14
 7 BY MR. KOVACICH 108
 8 BY MR. MUELLER 229
 9 BY MS. CASEY 236
 10 BY MR. LONGOZ 256
 11 BY MR. BROWN 269
 12 BY MS. DeCRISTOFARO 294, 338
 13 BY MR. SCHIAVONI 308, 334
 14 BY MR. POHLMAN 314
 15 BY MR. SPEIGHTS 339
 16 EXHIBITS
 17 EXHIBIT ID
 18 Exhibit 1 14
 19 Notice of Deposition of Jeffery
 20 Posner
 21 Exhibit 2 14
 22 Curriculum vitae of Jeffery M.
 23 Posner
 24 Exhibit 3 14
 Affidavit Under 11 USC 327(e)
 Exhibit 4 41
 Asbestos Settlement Agreement
 between W.R. Grace & Company-Conn.
 and the Aetna Casualty & Surety
 Company dated May 12th, 1996

Page 10

1	EXHIBITS	ID
2	EXHIBIT	
3	Exhibit 5	68
4	Exhibit 4 to Exhibit Book Trust	
5	Distribution Procedures	
6	Exhibit 6	82
7	First Amended Joint Plan of	
8	Reorganization	
9	Exhibit 7	96
10	Agreement between W.R. Grace &	
11	Company-Connecticut and the	
12	Travelers Casualty & Surety	
13	Company dated February 20, 1992	
14	Exhibit 8	106
15	Exhibit 19 to Exhibit Book,	
16	Retained Causes of Action	
17	Exhibit 9	113
18	Answer, Cross-claims and	
19	Counterclaims of Defendant W.R.	
20	Grace in re: Maryland Casualty v.	
21	Grace, et al.	
22	Exhibit 10	118
23	Royal Indemnity Company	
24	declaration sheets and	
	endorsements SA-870, 891, 939,	
	945-946	
	Exhibit 11	137
	Letter dated December 9, 1999 to	
	Royal & SunAlliance from Marsh USA	
	Exhibit 12	143
	Letter dated January 12, 2000 from	
	Royal and SunAlliance to J.M.	
	Posner, Inc., two pages	
	Exhibit 13	196
	E-mail string between Janet Baer	
	and Dan Cohn, three pages	

Page 12

1	EXHIBITS	ID
2	EXHIBIT	
3	Exhibit 23	317
4	Exhibit 6 to Exhibit Book,	
5	Asbestos Insurance Transfer	
6	Agreement	
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		

Page 11

1	EXHIBITS	ID
2	EXHIBIT	
3	Exhibit 14	216
4	Monthly asbestos litigation	
5	summary Bates stamped 91-1614	
6	through 1639	
7	Exhibit 15	270
8	Settlement agreement Bates stamped	
9	OB 1 through 33	
10	Exhibit 16	273
11	Settlement Agreement and Release	
12	Bates stamped OB 34 through 66	
13	Exhibit 17	277
14	Settlement Agreement and Release	
15	Bates stamped OB 67 through 92	
16	Exhibit 18	279
17	Settlement Agreement, Release and	
18	Indemnification/Hold Harmless	
19	Agreement Bates stamped SEA 1	
20	through 16	
21	Exhibit 19	280
22	Settlement Agreement, Release and	
23	Indemnification/Hold Harmless	
24	Agreement Bates stamped SEA 17	
	through 31	
	Exhibit 20	283
	Settlement Agreement, Release and	
	Indemnification/Hold Harmless	
	Agreement Bates stamped SEA 32	
	through 47	
	Exhibit 21	285
	Settlement Agreement & Release	
	Bates stamped SEA 48 through 61	
	Exhibit 22	294
	LexisNexis printout in re:	
	Maryland Casualty v. Grace, et al.	

Page 13

1	DEPOSITION SUPPORT INDEX
2	
3	Direction to Witness Not To Answer
4	Page Line Page Line
5	209 1 239 6
6	
7	Request For Production of Documents
8	Page Line Page Line
9	142 11 149 24
10	169 18
11	Stipulations
12	Page Line Page Line
13	(None)
14	Questions Marked
15	Page Line Page Line
16	(None)
17	
18	
19	
20	
21	
22	
23	
24	

Page 14

(Notice of Deposition of
Jeffery Posner received and marked
for identification as Posner
Exhibit 1.)

(Curriculum vitae of
Jeffery M. Posner received and
marked for identification as Posner
Exhibit 2.)

(Affidavit Under 11 USC
327(e) received and marked for
identification as Posner Exhibit
3.)

JEFFREY POSNER,
having been sworn by the Notary
Public of the States of New York
and New Jersey, was examined and
testified as follows:

EXAMINATION BY
MS. FORSHAW:

Q. Good morning. Mr. Posner.

A. Good morning.

Q. Good to see you again. I

Page 16

or nine copies of exhibits which
I'll pass out through the
deposition. You can put that
aside. For the record, I've marked
the Notice of Deposition of Jeffery
Posner as Exhibit 1.

BY MS. FORSHAW:

**Q. Mr. Posner, let me put
before you what I've marked as Exhibit 2,
which is a resume of Jeffery Posner. Do
you recognize this document as your
resume?**

**A. Yes, but it appears to me
to be an outdated copy of it.**

**Q. Okay. And for the record,
can you tell us in what way is this resume
outdated?**

**A. My business address, it's
an old business address which leads me to
believe that's a version that I kept
several years ago.**

**Q. Is the professional
experience described in your resume true
and accurate?**

Page 15

**know you've been through this drill many
times. If I talk too fast, just stop me.
If you have any questions about my
questions, let me know. If you need to
take a break, let me know.**

A. Definitely.

Q. Okay. I'm just --

**MR. KRAMER: I'm sorry.
Who's asking the questions, please?**

**MS. FORSHAW: Sure. It's
Mary Beth Forshaw from Simpson
Thacher representing Travelers
Casualty. If you guys have a hard
team hearing us, will you let us
know?**

**MS. KRIEGER: Yes, we will.
Thank you.**

**Q. Mr. Posner, I'm going to
put before you a Notice of Deposition of
Jeffery Posner. Do you understand you're
here to testify in response to that notice
today?**

A. Yes, I do.

MS. FORSHAW: I have eight

Page 17

A. Yes, I'm sure it is.

**Q. And this resume indicates
that you were employed at W.R.
Grace & Company from 1982 to 1999. Is
that correct?**

A. Yes, it is.

**Q. And for the record, can you
give us an overview of your employment
experience at W.R. Grace listing your
positions and the approximate years you
held each position?**

**A. I started with Grace in
1982 as an assistant claims manager. In
1986 I assumed the duties of a risk
analyst. Thereafter I became the
assistant director of risk management
sometime, I think, in 1987 and then in
1988 I was promoted to the director of
risk management and I became an assistant
vice president of the company.**

**Q. And during your tenure at
W.R. Grace, were you responsible for
overseeing asbestos-related coverage
litigations?**

Page 274

Page 276

1 Lewis signed it on behalf of Commercial
2 Union.

3 **Q. Okay. Now, when you --**
4 **well, let me ask you this: Did you**
5 **participate in the negotiations of this**
6 **agreement?**

7 A. Yes, I did.

8 **Q. And were the payments by**
9 **Commercial Union and its affiliates that**
10 **are set forth in this agreement actually**
11 **made?**

12 A. Yes, they were.

13 **Q. All right. You indicated**
14 **that you signed this on behalf of Grace**
15 **and there are two Grace entities listed on**
16 **page 32 and there is a third Grace entity**
17 **listed on -- well, let me use the Bates**
18 **numbers. On page 65 and 66 there's W.R.**
19 **Grace & Company-Conn, there is W.R. Grace**
20 **& Co.-Delaware and then on the next page**
21 **W.R. Grace & Co., a New York corporation**
22 **which has changed its name to Fresenius**
23 **National Medical Care Holdings, Inc. Do**
1 **you see that?**

1 A. Yes.

2 **Q. Okay. Is the company that**
3 **you signed the document on behalf of back**
4 **then now known as Fresenius Medical Care**
5 **Holdings, Inc.?**

6 A. It was at one time. I
7 don't know if today it is. It may be. I
8 haven't heard that it's changed its name
9 but I don't think I've heard much about
10 but, yeah, I believe certainly that was
11 the name at the time.

12 **Q. Is it your understanding**
13 **that that entity is a non-debtor?**

14 MS. ESAYIAN: If you know.

15 MR. HORKOVICH: Objection
16 to form.

17 A. Yeah, I believe that entity
18 would be a non-debtor.

19 **Q. Okay. And if you go back**
20 **to page 65, do you know what the name of**
21 **the company is today that back in December**
22 **of 1996 was called W.R. Grace &**
23 **Co.-Delaware?**

24 A. I think it's W.R. Grace &

Page 275

Page 277

1 A. Yes.

2 **Q. At the time that this**
3 **agreement was executed in 1996, this was**
4 **immediately following one of the two**
5 **restructurings of Grace. Is that**
6 **correct?**

7 A. I don't remember the date
8 of the restructuring, but obviously it was
9 after the -- I guess it had to be because
10 it references the -- I'm going to call it
11 the National Medical Care restructuring.
12 So I'm presuming that was executed after
13 that restructuring took place and I think
14 that took place after the Sealed Air
15 transaction so I think this is being
16 signed after both transactions. That is
17 my recollection.

18 **Q. Let's look at page 66.**

19 A. Okay.

20 **Q. When you signed this**
21 **document back on December 17th, 1996 on**
22 **behalf of W.R. Grace & Co., a New York**
23 **corporation, et cetera, you were obviously**
24 **authorized to do so?**

1 Co.-Delaware today, unless it's changed
2 its name. I don't recall. I thought it
3 was Delaware today as well, unless they
4 took the Delaware out of it.

5 **Q. It's not Sealed Air**
6 **Corporation?**

7 MS. ESAYIAN: Objection to
8 foundation. You can answer if you
9 can.

10 THE WITNESS: I'm thinking.

11 A. Sitting here, I don't
12 know.

13 **Q. Okay.**

14 **(Settlement Agreement and**
15 **Release Bates stamped OB 67 through**
16 **92 received and marked for**
17 **identification as Posner Exhibit**
18 **17.)**

19 **Q. Take a few moments to look**
20 **at what's been marked as Posner-17,**
21 **please.**

22 A. Okay, I looked at it.

23 **Q. Can you identify this**
24 **document?**

Page 278

Page 280

1 A. This is the settlement
2 agreement entered into by Grace and
3 Commercial Union in 1998, I'm going to
4 call it, relating to environmental claims
5 but it may encompass more than that but I
6 remember it as the environmental
7 settlement agreement.

8 **Q. Okay. Do you recognize the**
9 **signatures on page 25 and 26?**

10 A. Yes, I do.

11 **Q. Who signed on behalf of**
12 **W.R. Grace & Co.?**

13 A. Paul McMahon signed on
14 behalf of Grace and James McKay signed on
15 behalf of Commercial Union.

16 **Q. Were you involved in the**
17 **negotiation of this settlement**
18 **agreement?**

19 A. Yes, I was.

20 **Q. And were the payments that**
21 **were contemplated by this settlement**
22 **agreement made?**

23 A. Yes, they were.

24 **Q. Do you know whether the**

1 asbestos-related claims under an excess
2 policy issued by Unigard to Grace.

3 **Q. Were you involved in the**
4 **negotiation of this agreement?**

5 A. Yes, I was.

6 **Q. Can you identify the**
7 **signatures that appear on page 16, SEA**
8 **16?**

9 A. Yeah, Brian Burns signed it
10 on behalf of W.R. Grace and I can't make
11 out the signature of the Unigard person.

12 **Q. Okay. Were the payments**
13 **contemplated by this agreement made?**

14 A. Yes.

15 (Settlement Agreement,
16 Release and Indemnification/Hold
17 Harmless Agreement Bates stamped
18 SEA 17 through 31 received and
19 marked for identification as Posner
20 Exhibit 19.)

21 **Q. All right, Mr. Posner, you**
22 **now have before you Posner-19 and my first**
23 **question with respect to this document is:**
24 **Can you identify it for me?**

Page 279

Page 281

1 **company on page 35 that's listed as W.R.**
2 **Grace & Co. is the lead debtor in this**
3 **bankruptcy case today?**

4 MS. ESAYIAN: Page 25, you
5 mean?

6 MR. BROWN: Yes, page 25.
7 OB 91 is the Bates number.

8 A. I assume that it is but
9 it's an assumption.

10 **Q. Okay.**

11 (Settlement Agreement,
12 Release and Indemnification/Hold
13 Harmless Agreement Bates stamped
14 SEA 1 through 16 received and
15 marked for identification as Posner
16 Exhibit 18.)

17 **Q. You have before you a**
18 **document marked Posner-18 and my first**
19 **question is: Can you identify this**
20 **document?**

21 A. This is a settlement
22 agreement entered into by Grace with
23 Unigard -- it's called Unigard Insurance
24 Company here -- relating to

1 A. This is another agreement
2 between Grace and Unigard -- here it says
3 Unigard Security Insurance Company. I
4 guess the other one does as well --
5 involving another excess policy that
6 Unigard had issued to Grace and this
7 settlement appears to relate to
8 asbestos-related claims.

9 **Q. And it's dated from May of**
10 **1995?**

11 A. That is correct.

12 **Q. And the two Grace entities**
13 **that executed the agreement are W.R. Grace**
14 **& Co.-Conn. and W.R. Grace & Co.,**
15 **correct?**

16 A. Correct.

17 **Q. And you signed it on behalf**
18 **of both of those entities?**

19 A. That is correct.

20 **Q. Can you tell me what name**
21 **W.R. Grace & Co. goes by today that is the**
22 **entity that signed this agreement?**

23 A. Well, W.R. Grace &
24 Co.-Conn. still exists. W.R. Grace & Co.

Page 282

Page 284

-- I think when this was signed, I think the W.R. Grace & Co. listed here, I think, was a New York corporation, although maybe I'm confused, so much time has passed. And I think this may be the entity that changed its name to Fresenius. I'm not quite sure. There's been a number of changes over the years.

Q. If it is Fresenius, Fresenius is the -- that's Medical Care Holdings, Inc.?

A. Yes.

Q. Okay.

A. If it is. I'm just not sure. I'm using recollection now. It's going back 14 years. But Conn is listed. I seem to recall the original company was Grace & Co., and Grace & Co. changed its name to W.R. Grace & Co.-Conn. and then they created another corporation, W.R. Grace & Co., and I think that was a New York corporation.

Q. Okay.

A. But again I'm speaking from

into by Grace and Unigard Security Insurance and this one appears to relate to the Hatco -- I'll call it the Hatco environmental site which is in New Jersey, and this agreement was entered into in July of 1996.

Q. Okay. And who were the entities that are parties to the agreement?

A. W.R. Grace & Co.-Conn., W.R. Grace & Co. and Unigard Security Insurance Company are the ones that executed the agreement.

Q. And you executed it on behalf of both of the Grace entities?

A. That is correct, yes.

Q. And that was on or around July 11th, 1996?

A. That is correct.

Q. Were you involved in the negotiations of this agreement?

A. Yes, I was.

Q. And I may have asked you this, but were the payments contemplated

Page 283

Page 285

recollection.

Q. And Fresenius Medical Care Holdings, Inc. is not a debtor, correct?

A. They are not a debtor, that's correct.

Q. Were you involved in the negotiations of this agreement?

A. Yes.

Q. And were the payments that were contemplated by this agreement made by Unigard?

A. Yes.

(Settlement Agreement, Release and Indemnification/Hold Harmless Agreement Bates stamped SEA 32 through 47 received and marked for identification as Posner Exhibit 20.)

Q. All right, Mr. Posner, you have before you Posner-20. Again, the first question is: Can you identify the document for me?

A. Yeah. This is an agreement -- another agreement entered

by this agreement made by Unigard?

A. Yes.

Q. Okay. The entity W.R. Grace & Co. that executed this agreement is, to the best of your understanding, Fresenius Medical Care Holdings, Inc. today. Is that correct?

A. Now again I'm speaking from recollection so I think so but I'm just not 100 percent sure because again I think it's the New York corporation. Conn is certainly the Connecticut corporation and Grace & Co. at the time was a New York corporation but I'm speaking from recollection. I mean, it is what it is.

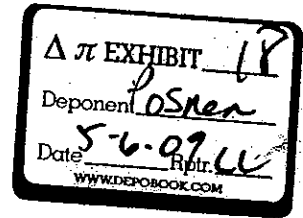
Q. Okay.

A. That's my best recollection.

MR. BROWN: Last one.

(Settlement Agreement & Release Bates stamped SEA 48 through 61 received and marked for identification as Posner Exhibit 21.)

SETTLEMENT AGREEMENT, RELEASE AND
INDEMNIFICATION/HOLD HARMLESS AGREEMENT



This Settlement Agreement, Release and Indemnification/Hold Harmless Agreement is entered into this 6th day of August, 1992 by W. R. Grace & Co.-Conn., a Connecticut Corporation, formerly W. R. Grace & Co. ("Grace") (as defined in Section II., H. of this Agreement) and Unigard Security Insurance Company, formerly Unigard Mutual Insurance Company ("Unigard") (as defined in Section II., I. of this Agreement).

I. RECITALS

WHEREAS, Grace and Unigard entered into a contract of insurance, Policy No. 1-2517 with a policy period of June 30, 1974 to June 30, 1975 which has limits of liability of Ten Million Dollars (\$10,000,000.00) in the aggregate for claims arising out of the "Products-Completed Operations Hazards," as those terms are defined under Policy No. 1-2517 ("the Unigard Policy") or any other policy whose form Unigard may be held to follow.

WHEREAS, numerous Asbestos-Related Claims (as defined in Section II.G. of this Agreement) have been made against Grace.

WHEREAS, in the following lawsuits, there are claims pending between Grace and a number of insurers, including Unigard, seeking declaratory relief and damages with respect to the alleged obligations of the insurers, including Unigard, to defend and indemnify Grace for Asbestos-Related Claims (as defined in Section II., G. of this Agreement) against Grace:

Moore, ex rel. State of Mississippi v. The Flintkote Co., et al. v. Maryland Casualty Co., et al., No. 89-5138(2), filed in the Circuit Court of Jackson County Mississippi (the "Mississippi Action");

Independent School District 197, et al. and W. R. Grace & Co.-Conn. v. Accident & Casualty Co. of Winterthur, et al. No. 19-C4-88-007950, filed in the District Court of the County of Dakota, Minnesota (the "Minnesota Action");

W. R. Grace & Co.-Conn. v. Admiral Insurance Co., et al., No. 91-048251, filed in the District Court of Harris County, Texas (the "Houston Action");

Dayton Independent School District, et al. v. United States Mineral Products Co. and W. R. Grace & Co.-Conn. v. Admiral Insurance Co., et al., No. B-87-00507, filed in the United States District Court for the Eastern District of Texas, Beaumont (the "Beaumont Action");

Maryland Casualty Company v. W. R. Grace & Co., et al., No. 88 Civ. 2613 (SWK), filed in the United States District Court for the Southern District of New York (the "New York Action");

American Employers Insurance Company, et al. v. W.R. Grace & Co.-Conn., et al., No. 6241-92, filed in the Supreme Court of the State of New York, County of New York (the "New York State Court Action"); and

W. R. Grace & Co.-Conn. v. Admiral Insurance Company, et al., No. BC 050432, filed in the Superior Court of the County of Los Angeles, California (the "California Action").

These lawsuits shall be referred to collectively as "the insurance coverage litigation."

WHEREAS, Unigard denies that it has any obligation to defend or indemnify Grace in connection with any Asbestos-Related Claims.

WHEREAS, Grace and Unigard have incurred attorneys' fees and other expenses in connection with the insurance coverage litigation.

WHEREAS, Grace and Unigard anticipate that additional attorneys' fees and expenses will be incurred by each of them if they are required to pursue further and defend against the insurance coverage litigation, and Grace and Unigard desire to resolve amicably and discontinue the insurance coverage litigation with respect to the Unigard Policy and to avoid the costs and risks of such litigation by entering into this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and intending to be legally bound hereby, Grace and Unigard agree as follows:

II. DEFINITIONS

A. The definitions of the terms "Personal Injuries" and "Property Damage" shall be the same as those terms are defined in the Unigard Policy or any other policy whose form the Unigard Policy may be held to follow.

B. "Asbestos-Related Products Personal Injury Claims" shall mean any and all claims for Personal Injuries arising from asbestos products manufactured, sold, handled or distributed by Grace or by others trading under its name or arising from products manufactured, sold, handled or distributed by Grace which allegedly contain asbestos or to which asbestos was allegedly added as an ingredient.

C. "Asbestos-Related Products Property Damage Claims" shall mean any and all claims for Property Damage arising from asbestos products manufactured, sold, handled or distributed by Grace or by others trading under its name or arising from products manufactured, sold, handled or distributed by Grace which allegedly contain asbestos or to which asbestos was allegedly added as an ingredient.

D. "Products Personal Injury Claims" shall mean claims for Personal Injuries that fall within the "Products-Completed Operations Hazards," as those terms are defined in the Unigard Policy or any other policy whose form the Unigard Policy may be held to follow. Products Personal Injury Claims include, but are not limited to, Asbestos-Related Products Personal Injury Claims.

E. "Products Property Damage Claims" shall mean claims for Property Damage that fall within the "Products-Completed Operations Hazards," as those terms are defined in the Unigard Policy or any other policy whose form the Unigard Policy may be held to follow. Products Property Damage Claims include, but are not limited to, Asbestos-Related Products Property Damage Claims.

F. "Products Claims" shall mean both Products Personal Injury Claims and Products Property Damage Claims as those terms are defined above.

G. "Asbestos-Related Claims" shall mean both Asbestos-Related Products Personal Injury Claims and Asbestos-Related Products Property Damage Claims as those terms are defined above.

H. "Grace" shall mean W.R. Grace & Co. -- Conn., its predecessors, successors, divisions, subdivisions, departments and subsidiary companies or corporations.

I. "Unigard" shall mean Unigard Security Insurance Company, John Hancock Mutual Life Insurance Company, John Hancock Property & Casualty Holding Company, John Hancock Management Company, any entity owned or controlled by any of them, and the past and present directors, officers, employees, parents, subsidiaries, predecessors, and successors of each of the foregoing, together with the assigns of any rights or obligations of any of them under the Unigard Policy.

III. PAYMENT BY UNIGARD IN COMPROMISE OF DISPUTED CLAIMS

Within twenty one days after the date of the execution of this Agreement, Unigard will pay to Grace the sum of Ten Million Dollars (\$10,000,000.00), the full aggregate limits of liability under the Unigard Policy for claims arising out of the "Products-Completed Operations Hazards," as those terms are defined under the Unigard Policy or any other policy whose form

Unigard may be held to follow (the "Settlement Amount"). Grace will provide to Unigard any information that Unigard shall reasonably request relating to the Products Claims. Unigard shall not seek to recover from any of Grace's insurers any portion of the Settlement Amount other than any amounts owed to Unigard arising out of agreements to provide reinsurance to Unigard under the Unigard Policy.

IV. RELEASE

In consideration of the payment by Unigard of the Settlement Amount and the mutual release of rights contained herein, Grace does hereby fully and forever release and discharge Unigard, its agents, reinsurers and attorneys from any obligation under the Unigard Policy for any and all past, present, or future claims, demands, obligations, suits, actions, causes of action and rights whatsoever for indemnity, defense and/or damages (including compensatory, punitive, exemplary, extracontractual or statutory) or other payments of any nature, which Grace may have or otherwise be required to pay, or which may hereafter accrue, (a) on account of, in any way growing out of, or in any way related to Products Claims under the Unigard Policy, whether known or unknown as of the date of execution of this Agreement; and (b) for any damages (including compensatory, punitive, exemplary, extracontractual or statutory) based upon any allegations of bad faith, unfair claim practice, unfair trade practice or other act or failure to act arising out of Unigard's

role as an insurer under the Unigard Policy with respect to any Products Claims whatsoever.

Grace's release of Unigard shall in no event inure to the benefit of any other insurance company that, at any time after the date this Agreement is executed, is merged into Unigard, or in which Unigard, at any time after the date this Agreement is executed, acquires a controlling interest. This release shall not prevent Grace from asserting against Unigard, its agents, reinsurers and attorneys any claim which Grace may have, or which may hereafter accrue, (a) on account of, in any way growing out of, or in any way related to Products Claims, whether known or unknown as of the date of this Agreement, under any insurance policy issued by Unigard other than the Unigard Policy; and (b) for any damages (including compensatory, punitive, exemplary, extracontractual or statutory) based upon any allegations of bad faith, unfair claim practice, unfair trade practice or other act or failure to act arising out of Unigard's role as an insurer under any insurance policy issued by Unigard other than the Unigard Policy with respect to any Products Claims whatsoever.

V. INDEMNIFICATION/HOLD HARMLESS AGREEMENT

A. In further consideration of the Settlement Amount, Grace agrees to indemnify, to hold Unigard harmless from and to reimburse Unigard for the full amount of any judgment, award, payment, settlement, suit or claim against Unigard by any other insurance carrier seeking contribution under the Unigard Policy

for Product Claims, or by any other person or entity claiming any right, assignment of rights, rights of subrogation, title or interest in or under the Unigard Policy for Product Claims, including without limitation claims for damages (including compensatory, punitive, exemplary, extracontractual or statutory) caused or allegedly caused in whole or in part by the conduct of Unigard under the Unigard Policy with respect to such Product Claims; but provided, however, that in no event shall Grace be obligated to indemnify, to hold Unigard harmless from or to reimburse Unigard for (i) any claim arising out of reinsurance provided to Unigard under the Unigard Policy, or (ii) the amount of any payment or settlement entered into by Unigard without the prior consent of Grace, which consent shall not be unreasonably withheld.

B. Grace also agrees to indemnify Unigard for all costs and reasonable attorneys' fees associated with the claims for which Grace is obligated to indemnify Unigard as set forth in paragraph A of this Article, and which are incurred after the execution of this Agreement, but excluding any costs associated with the enforcement of this Agreement. Unigard immediately shall advise Grace of the pendency of any suit or claim for which Grace is obligated to indemnify Unigard as set forth in Article V of this Agreement and keep Grace informed of any developments with respect to such claims or suits, including but not limited to any discovery requests and any motions.

C. Unigard shall defend diligently and in good faith

any claim for which Grace is obligated to indemnify Unigard as set forth in paragraph A of this Article, utilizing the services of Taylor, Anderson & Travers or, at Unigard's option, other counsel approved by Grace.

D. Unigard shall not incur costs or attorneys' fees without the prior approval of Grace, which approval shall not be unreasonably withheld.

E. Grace has the right, at its own expense, to participate in the defense of Unigard.

F. In the event that Unigard, while defending any claim described in paragraph A of this Article, incurs costs or attorneys' fees relating both to the Unigard Policy and other insurance policies issued by Unigard, Grace shall only be required to indemnify Unigard for that portion of such costs relating to the Unigard Policy. The parties agree to use their best efforts to reach agreement on allocation of such costs. Any dispute between the parties over the allocation of such costs which cannot be resolved by agreement shall be resolved through arbitration.

VI. NO ADMISSIONS BY THE PARTIES

A. The payment by Unigard of the Settlement Amount and its receipt by Grace is for the compromise of disputed claims, and neither such payment nor its receipt shall be construed as an admission by Unigard or Grace that any coverage or obligation to pay exists or does not exist under any Unigard

policy for defense or indemnity of Grace for claims of any nature. By entering into this Agreement, Unigard does not admit that it has any liability or obligation to Grace or to any other person.

B. Further, this Agreement is not intended to be, nor shall it be construed as, an admission with respect to policy interpretation or as an admission by any party regarding any duties, rights or obligations arising under the Unigard Policy or any other policy of insurance issued by Unigard to Grace or anyone else. Nothing in this Agreement shall be deemed to constitute a release, compromise, waiver or an estoppel of any right of Grace or Unigard to assert any claim or defense pursuant to any policy of insurance issued by Unigard or any other insurer.

VII. DISMISSAL WITH PREJUDICE OF CERTAIN ACTIONS,
CLAIMS, AND CAUSES OF ACTION

A. Upon the execution of this Agreement by the parties, Grace will dismiss with prejudice the claims and causes of action Grace has asserted against Unigard relating to the Unigard Policy in the Mississippi Action, the Minnesota Action, the Houston Action, the Beaumont Action, the New York Action and the California Action. Further, Grace will make all reasonable efforts to cause the remaining plaintiffs in the Minnesota Action to dismiss with prejudice the claims and causes of action they have asserted against Unigard relating to the Unigard Policy in the Minnesota Action. Further, Grace will dismiss with prejudice

its Sixth Cause of Action for Breach of Implied Covenant of Good Faith and Fair Dealing against Unigard under the Unigard Policy contained in the First Amended Complaint for Declaratory Relief, Breach of Contract and Breach of the Implied Covenant of Good Faith and Fair Dealing in the California Action.

B. Unigard will dismiss with prejudice the claims and causes of action Unigard has asserted against Grace relating to the Unigard Policy in the New York State Court Action.

C. Each party shall bear its own past costs and attorneys' fees incurred in connection with the insurance coverage litigation and any such costs and fees incurred to negotiate or implement the terms of this Agreement.

D. Grace will cooperate with Unigard to minimize and prevent the possibility of the prosecution of cross-claims or other actions against Unigard by any other party.

VIII. NO CONSTRUCTION AGAINST EITHER PARTY

The wording of this Agreement was reviewed and accepted by legal counsel for Grace and Unigard prior to its being signed by them. Any ambiguities in the language of this Agreement shall not be construed against either party on the grounds that the party was the alleged drafter of the language in the event of any dispute arising between them in connection with this Agreement.

IX. INADMISSIBILITY OF AGREEMENT

Any evidence of the existence, terms or negotiation of this Agreement shall be inadmissible in any litigation, action or other proceeding, provided, however, that such evidence may be offered in an action seeking solely to enforce the terms of this Agreement or in connection with any litigation, action or other proceeding, between Unigard and any of its reinsurers or in connection with any litigation, action or other proceeding to establish exhaustion of the Unigard Policy. In any litigation, action or other proceeding where exhaustion of the Unigard Policy is at issue, Unigard shall, subject to the provisions of Article VI of this Agreement, reasonably assist Grace in establishing that the Unigard Policy's limits of liability applicable to Products Claims properly have been exhausted. This Agreement has been entered into in reliance upon the provisions of Rule 408 of the Federal Rules of Evidence and similar state law provisions which preclude the introduction of evidence regarding settlement negotiations or agreements.

X. APPLICATION OF AGREEMENT ONLY TO THE PARTIES

This Agreement is intended to confer rights and benefits only on the parties hereto and only with respect to the terms and conditions set forth herein.

XI. ENTIRE AGREEMENT/AMENDMENTS TO AGREEMENT

This Agreement is the complete and entire agreement of the parties and may not be modified, changed, contradicted, added to, or altered in any way by any previous written or oral agreements or any subsequent oral agreements. No amendments or variations of the terms of the Agreement shall be valid unless made in writing and signed by both parties.

XII. CONFIDENTIALITY

The terms and conditions of this Agreement shall remain confidential and shall not be disclosed to any person or entity without the prior written consent of both parties, except: as required by contract or by authority of a court, administrative tribunal, arbitration panel, regulatory agency; in the normal course of business for such purposes as audits and accounting; or, where exhaustion of the Unigard Policy's limits of liability applicable to Products Claims are at issue, to Grace's other insurers, to underlying claimants and to any other person or entity. Should a court order the disclosure of the terms of this Agreement to any other person or entity, the parties shall use their reasonable efforts to maintain its terms under seal and/or protective order.

XIII. REPRESENTATION AND WARRANTIES

Each party represents and warrants to the other:

- A. that it is fully authorized to enter into this Agreement;
- B. that it is a corporation, duly organized and validly existing in good standing under the laws of one of the states of the United States of America;
- C. that it has taken all necessary corporate and internal legal actions to duly approve the making and performance of this Agreement and that no further governmental, regulatory, corporate or other internal approval is necessary;
- D. that the making and performance of this Agreement will not violate any provision of law or of its articles of incorporation, charter or by-laws;
- E. that it has read this entire Agreement and knows the contents hereof, that the terms hereof are contractual and not merely recitals, and that it has signed this Agreement of its own free act;
- F. that in making this Agreement, it has obtained the advice of legal counsel; and
- G. that there are no pending agreements, transactions or negotiations to which it is a party that would render this Agreement or any part thereof void, voidable or unenforceable.

XIV. NOTICE

All notices or other communications which any party desires or is required to give shall be given in writing and shall be deemed to have been given if sent by certified mail to the party at the address noted below or such other address as a party may designate in writing from time to time:

W. R. Grace & Co. - Conn.
Attn: Secretary
W. R. Grace & Co.
One Town Center Road
Boca Raton, Florida 33486

with a copy to:

Director of Corporate Risk Management
W. R. Grace & Co.
One Town Center Road
Boca Raton, Florida 33486

Unigard Security Insurance Company
Attn: General Counsel
P.O. Box 90701
15805 N.E. 24th Street
Bellevue, Washington 98008

and

John Hancock Property and Casualty Company
Attn: General Counsel
P.O. Box 854
3 Copley Place
Boston, Massachusetts 02117

with a copy to:

Allan E. Taylor, Esq.
Taylor, Anderson & Travers
75 Federal Street
Boston, Massachusetts 02110

W. R. GRACE & CO.-CONN.

Date: 8/6/92

By Barry B. Bunker
Its VICE PRESIDENT

UNIGARD SECURITY INSURANCE COMPANY

Date: 8/3/92

By Michael M. Moly
Its Assistant Secretary